

State of Alaska

ETHICS INFORMATION FOR MEMBERS OF BOARDS AND COMMISSIONS (AS 39.52)

INTRODUCTION

This is an introduction to AS 39.52, the *Alaska Executive Branch Ethics Act*. This guide is not a substitute for reading the law and its regulations. State board and commission members who have further questions should contact their board chair or staff.

The Ethics Act applies to all current and former executive branch public employees and *members of statutorily created boards and commissions*.

SCOPE OF ETHICS ACT (AS 39.52.110)

Service on a state board or commission is a public trust. The Ethics Act prohibits substantial and material conflicts of interest. Further, board or commission members cannot improperly benefit financially or personally from their actions as board or commission members. The Act does not, however, discourage independent pursuits, and it recognizes that minor and inconsequential conflicts of interest are unavoidable.

MISUSE OF OFFICIAL POSITION (AS 39.52.120)

Members of boards or commissions may not use their positions for personal gain or to give an unwarranted benefit or treatment to any person. For example, board members may not:

- ♦ use their official positions to secure employment or contracts;

- ♦ accept compensation from anyone other than the State for performing official duties;
- ♦ use State time, equipment, property or facilities for their own personal or financial benefit or for partisan political purposes;
- ♦ take or withhold official action on a matter in which they have a personal or financial interest; or
- ♦ coerce subordinates for his/her personal or financial benefit.
- ♦ attempt to influence outcome of an administrative hearing by privately contacting the hearing officer.



Terry knew that a proposal that was before the board would harm Terry's business competitor. Instead of publicly disclosing the matter and requesting recusal, Terry voted on the proposal.



Board member Mick has board staff employee Bob type an article for him that Mick hopes to sell to an Alaskan magazine. Bob types the article on State time.

IMPROPER GIFTS (AS 39.52.130)

A board member may not solicit or accept gifts if it could reasonably be inferred that the gift is intended to influence the board member's action or judgment. "Gifts" include money, items of value, services, loans, travel, entertainment, hospitality, and employment. All gifts from registered lobbyists are presumed to be improper, unless the giver is an immediate family member of the person receiving the gift.

A gift worth more than \$150 to a board member or the board member's family must be reported within 30 days if:

- ♦ the board member can take official action that can affect the giver, or
- ♦ the gift is given to the board member because he or she is on a state board.

The receipt of a gift worth less than \$150 may be prohibited if it could reasonably be inferred that the gift is intended to influence the board member's action or judgment. Receipt of such a gift should be disclosed.

Any gift received from another government, regardless of value, must be reported; the board member will be advised as to the disposition of this gift.

A form for reporting gifts is available at www.law.state.ak.u/sdoclibrary/ethics or from the board or commission staff.

This restriction on gifts does not apply to lawful campaign contributions.



The commission is reviewing Roy's proposal for an expansion of his business. Roy invites all the board members out to dinner at an expensive restaurant. He says it will be okay, since he isn't excluding any of the members.



Sam buys a holiday gift every year for Jody. Jody was recently appointed to a board, but Sam has no business that is up before the board.

IMPROPER USE OR DISCLOSURE OF INFORMATION (AS 39.52.140)

No former or current member of a board may use or disclose any information acquired through the board if that use or disclosure could result in a financial or personal benefit to the board member (or a family member), unless that information has already been disseminated to the public.



Sheila has been on the board for several years. She feels she has learned a great deal of general information about how to

have a successful business venture. So she sets up her own business and does well.



Delores has always advised and assisted the other doctors in her clinic on their continuing education requirements. After Delores is appointed to the medical board, she discloses this role to the board and continues to advise the doctors in her clinic.

IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES OR LOANS (AS 39.52.150)

A board member who can affect the award or administration of a State grant, contract, lease, or loan may not apply for, or have an interest in that State grant, contract, lease, or loan. This prohibition also applies to the board member's immediate family.

A board member (or a family member) may apply for or be a party to a *competitively solicited* State grant, contract or lease, if the board member does not serve in the same administrative unit awarding or administering the grant, contract, or lease *and* so long as the board member does not take official action in the award or administration of the grant, contract, or lease.

A board member (or a family member) may apply for and receive a State loan that is generally available to the public and has fixed eligibility standards, so long as the board member does not take (or withhold) official action affecting the award or administration of the loan.

Board members must report to the board chair any personal or financial interest (or that of a family member) in a State grant, contract, lease or loan that is awarded or administered by the agency the board member serves. *A form for this purpose is available at www.law.state.ak.us/doclibrary/ethics or from the board or commission staff.*



John sits on a board that awards state grants. John hasn't seen his daughter for nearly ten years so he figures that it doesn't matter when her grant application comes up before the board.



The board wants to contract out for an analysis of the board's decisions over the last ten years. Kim would like the contract since she has been on the board for ten years and feels she could do a good job.

IMPROPER REPRESENTATION (AS 39.52.160)

A nonsalaried board or commission member may represent, advise, or assist in matters in which the member has an interest that is regulated by the member's own board or commission, if the member acts in accordance with AS 39.52.220 by disclosing the involvement in writing and on the public record, and refrains from all participation and voting on the matter. This section does not allow a board member to engage in any conduct that would violate a different section of the Ethics Act.

RESTRICTION ON EMPLOYMENT AFTER LEAVING STATE SERVICE (AS 39.52.180)

For two years after leaving a board, a former board member may not work on any matter on which the former member had personally and substantially participated while on the board. This prohibition applies to cases, proceedings, applications, and contracts and similar matters.

Former members of the governing boards of public corporations and former members of boards and commissions that have regulation-adoption authority, except those covered by the centralized licensing provisions of AS 08.01, may not lobby for pay for one year.

This section does not prohibit a State agency from contracting directly with a former board member.

With the approval of the Attorney General, the board chair may waive this prohibition if a determination is made that the public interest is not jeopardized.



The board has arranged for an extensive study of the effects of the Department's programs. Andy, a board member, did most of the liaison work with the contractor selected by the board, including some negotiations about the scope of the study. Andy quits the board and goes to work for the contractor, working on the study of the effects of the Department's programs.



Andy takes the job, but specifies that he will have to work on another project.

AIDING A VIOLATION PROHIBITED (AS 39.52.190)

Aiding another public officer to violate this chapter is prohibited.

AGENCY POLICIES (AS 39.52.920)

Subject to the Attorney General's review, a board may adopt additional written policies further limiting personal or financial interests of board members.

DISCLOSURE PROCEDURES

DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS OF BOARDS OR COMMISSIONS (AS 39.52.220)

A board member whose interests or activities could result in a violation of the Ethics Act must disclose the matter on the public record and in writing to the board chair who determines whether a violation exists. *A form for this purpose is available at www.law.state.ak.us/doclibrary/ethics or from the board or commission staff.* If a board member objects to the chair's ruling or if the chair discloses a potential conflict, the board members at the meeting (excluding the involved member) must vote on the matter. If

the board chair or the board determines a violation would exist, the member must refrain from deliberating, voting, or participating in the matter. For more information, see *Ethics Act Procedures for Boards and Commissions* available at the above noted web site.

When determining whether a board member is involved in a matter that may result in a violation of the Ethics Act, either the board chair or the board or commission itself may request guidance from the Attorney General.

ATTORNEY GENERAL'S ADVICE (AS 39.52.240-250)

Board chairs or the board itself may request a written advisory opinion from the Attorney General. These opinions are confidential. Versions without identifying information may be made available to the public.

A former board member may request a written opinion from the Attorney General interpreting the Ethics Act.

REPORTS BY THIRD PARTIES (AS 39.52.230)

A third party may report a suspected violation of the Ethics Act by a board member in writing and under oath to the chair of a board or commission. The chair will give a copy to the board member and to the Attorney General and review the report to determine whether a violation may or does exist. If the chair determines a violation exists, the board member will be asked to refrain from deliberating, voting, or participating in the matter.

COMPLAINTS, HEARINGS, AND ENFORCEMENT

COMPLAINTS (AS 39.52.310-330)

Any person may file a complaint with the Attorney General about the conduct of a current or former board member. Complaints must be written and signed under oath. The Attorney General may also initiate complaints from information provided by a board. A copy of

the complaint will be sent to the board member who is the subject of the complaint and to the Personnel Board.

All complaints are reviewed by the Attorney General. If the Attorney General determines that the complaint does not warrant investigation, the complainant and the board member will be notified of the dismissal.

The Attorney General may refer a complaint to the board member's chair for resolution.

After investigation, the Attorney General may dismiss a complaint for lack of probable cause to believe a violation occurred. The complainant and board member will be promptly notified of this decision.

Alternatively, if probable cause exists, the Attorney General may initiate a formal proceeding by serving the board or commission member with an accusation alleging a violation of the Ethics Act.

CONFIDENTIALITY (AS 39.52.340)

Complaints and investigations prior to formal proceedings are confidential. If the Attorney General finds evidence of probable criminal activity, the appropriate law enforcement agency shall be notified.

HEARINGS (AS 39.52.350-360)

An accusation by the Attorney General of an alleged violation may result in a hearing. An administrative law judge from the state's Office of Administrative Hearings serves as hearing officer and determines the time, place and other matters. The parties to the hearing are the Attorney General, acting as prosecutor, and the accused public officer, who may be represented by an attorney. Within 30 days of the conclusion of the hearing, the hearing officer

files a report with the Personnel Board and provides a copy to the parties.

PERSONNEL BOARD ACTION (AS 39.52.370)

The hearing officer's report will be reviewed by the Personnel Board. The Personnel Board is responsible for determining whether a violation occurred and for imposing penalties. An appeal may be filed by the board member in the Superior Court.

PENALTIES (AS 39.52.410-460)

When the Personnel Board determines a board member has violated the Ethics Act, the member must refrain from voting, deliberating, or participating in the matter. The Personnel Board may order restitution and may recommend that the board member be removed from the board or commission. If a recommendation of removal is made, the appointing authority will immediately remove the member. If the Personnel Board finds that a former board member violated the Ethics Act, the Personnel Board will issue a public statement about the case and will ask the Attorney General to pursue appropriate additional legal remedies.

State grants, contracts, and leases awarded in violation of the Ethics Act are voidable.

Loans given in violation of the Ethics Act may be made immediately payable.

Fees, gifts, or compensation received in violation of the Ethics Act may be recovered by the Attorney General.

The Personnel Board may impose a fine of up to \$5,000 for each violation of the Ethics Act. In addition, a board member may be required to pay up to twice the financial benefit received in violation of the Ethics Act.

Criminal penalties are in addition to the civil penalties listed above.

DEFINITIONS (AS 39.52.960)

Please keep the following definitions in mind:

Benefit - anything that is to a person's advantage regardless financial interest or from which a person hopes to gain in any way.

Board or Commission - a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch, including the Alaska Railroad Corporation.

Designated Ethics Supervisor - the chair or acting chair of the board or commission for all board or commission members and for executive directors; for staff members, the executive director is the designated ethics supervisor.

Financial Interest - any property, ownership, management, professional, or private interest from which a board or commission member or the board or commission member's immediate family receives or expects to receive a financial benefit.

Immediate Family - spouse; another person cohabiting with the person in a conjugal relationship that is not a legal marriage; a child, including a stepchild and an adoptive child; a parent, sibling, grandparent, aunt, or uncle of the person; and a parent or sibling of the person's spouse.

Personal Interest - the interest or involvement of a board or commission member (or a family member) in any organization or political party from which a person or organization receives a benefit.

Official Action - advice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer.

For further information and disclosure forms, visit our web site at <http://www.law.state.ak.us> (Executive Branch Ethics) or please contact:

State Ethics Attorney
Alaska Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-5903
(907) 269-5100
Attorney_General@alaska.gov

Revised 6/2007